quires it, the Court should be at liberty to re-open the case. It is particularly so where there has only been a provisional order and this is done to perfect an order. In the present case we think that the learned Judge had acted correctly when he re-opened the case with a view to perfecting the order.

As for the damages awarded, we see no reason to differ from the decision of the learned Judge. The damages assessed in respect of the claim for damages to land, fence, building, plant, machinery, raw materials and finished goods and also the loss of profits were supported by facts and figures as set out in Tharmalingam's report. However we do not see how the learned Judge came to assess the damages for inconvenience. The claims under para 15 and 16 of the Statement of Claim are in the nature of special damages and no claim was made in the Statement of Claim in regard to inconvenience which is strictly a claim for general damages. Furthermore nothing was said by counsel for the respondents in his submission either before the written judgment was delivered or in the course of arguments when the case was re-opened for assessment of damages.

For reasons stated we accordingly also dismiss the appeal except $20,000.00 damages on inconvenience which we allow. In this respect we set aside the order of the learned Judge.

As the sum allowed constitutes a small percentage of the total damages awarded, we do not consider fit to award costs to the appellants. The respondents are awarded costs of this appeal.

Appeal dismissed.

Solicitors: *Lim Kean Chye & Co.; Ng Ek Teong & Rakan-Rakan.*

HEADMISTRESS, METHODIST GIRLS SCHOOL & ORS. v. HEADMASTER, ANGLO-CHINESE PRIMARY SCHOOL & ANOR.

[F.C. (Salleh Abas Ag. L.P., Abdul Hamid & Abdoolcader F.JJ.) January 23 & February 23, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 198 of 1982]

Tort – Negligence – Injury caused to pupil knocked down by school bus whilst walking in compound of school – Liability of driver of school bus and owner of bus – Liability of school authority for allowing bus in school compound – Duty of owner and occupier of premises to keep school premises safe.

In this case a pupil aged 9 years was knocked down by a school bus while walking in the compound of his school, the Anglo-Chinese Primary School, in order to go home. He sustained serious injuries and sued the appellants (the bus owners and the driver) for damages. The appellants in turn brought in the respondents (the Headmaster of the school and the Government) as the third party claiming contribution in the event of liability against them on the ground that they as school authorities were also partly liable for allowing the bus to enter the school compound. The trial judge found the appellants wholly liable and awarded the plaintiff the sum of $20,000.00 as general damages and dismissed the appellant's claim for contribution. The appellants appealed against the dismissal of their claim for contribution.

Held: (1) as owner and occupier of the premises, the respondents, the school authorities were under a duty to keep the school premises safe. In the circumstances of this case it is extremely difficult to hold the school authorities free from any blame. They must share the blame with the appellants;

(2) in view of the fact that their fault only consists of allowing the bus to come in, which is a privilege the bus need not have to make use of, or a risk which it need not have taken, the blame on the school authorities should be of lesser degree than that of the appellants, the bus owners and the driver;

(3) the total liability should be apportioned at 30% against the respondents (the school authorities) and 70% against the appellants (the bus owners and the driver).

FEDERAL COURT.

Ng Chee Kong for the appellants.

M. Mahalingam, Senior Federal Counsel, for the respondents.

Salleh Abas Ag. L.P. (delivering the Judgment of the Court): On June 5, 1973 at about 12.30 p.m. the plaintiff, one Hew Wan Hoong, who was then an infant, aged 9 years old, whilst walking in the compound of his school, (Anglo-Chinese Primary School) in order to go home was knocked

down by a school bus. He sustained fairly serious injuries. He sued the appellants, (the bus owners, and the driver) for damages and they in turn brought in the respondents (Headmaster of the school and the Government) as the third party claiming for a contribution in the event of liability being found against them on the ground that they as school authorities were also partly liable for allowing the bus to enter the school compound.

The trial judge found the appellants wholly liable and awarded the plaintiff a sum of $20,000.00 as general damages and another sum of $794.00 as special damages and dismissed the appellants' claim for contribution against the respondents with costs. The appellants are unhappy that the learned judge dismissed their claim for contribution and hence this appeal.

The issue raised by their counsel in this appeal is this: whether the respondents, being the school authorities, in the circumstances of this case, were guilty of contributory negligence in allowing the bus to enter the school compound.

According to the sketch plan (p. 65 of AR) the school buildings consist of four separate blocks, built in such a way as to leave a wide open square space (referred to herein as "the square") in the middle as the school playground. In the centre of the square stands a two-storey building used as the school assembly hall. The principal's office is in the first block right opposite of this hall. At the entrance of the school compound there is a gate, from which a drive-way past the house on the left leads to the square. Outside the gate there is a church. Parents' cars are not allowed to come into the square to pick up their children. The school authorities insisted that they wait for their children outside the school gate by the church. However, teachers' cars are allowed to come in and park in the square and school buses, of which there were only two, were also allowed to come into the square to drop and pick up children. Since this accident, buses are no longer allowed in and since then the school authorities have now posted a big notice board at the entrance prohibiting vehicles from entering. This is the first time a vehicle accident ever occurred in the school compound.

There is clear evidence that the bus would come and stop in front of the principal's office to drop children. After that it would reverse and turn in the direction of the church and then park in front of the principal's office to wait for the children. It was during the course of dropping the children that the bus in the instant case hit the plaintiff who was then peacefully walking on the side of the road in order to go home after school was dismissed. He could not avoid being hit because the road was not only narrow but its side was also bounded by an iron railing. As the bus was being negligently driven, there was hardly any space left for the plaintiff to manoeuvre between the railing and the bus. And so, he was hit and according to the evidence of a teacher who saw the accident, the plaintiff was sandwiched between the bus and the railing. There being no dispute that the bus was at fault the question is whether the school authorities were also at fault?

As an owner and occupier of the premises the respondents, the school authorities, are under a duty to keep the school premises safe. They knew that the road was extremely narrow and looking after children being their regular function, they must have appreciated that the children, once dismissed from classes, tend to disperse in all directions in disorderly fashion regardless of cautions their teachers may have given them. The school authorities were correct in preventing parents' cars from coming up to the school's square for safety reason but we do not understand why an exception was made in favour of the two school buses. Surely, buses being the bigger vehicles would pose a greater potential danger especially when the road is so narrow that there is hardly sufficient room for them to manoeuvre. We find it extremely difficult to hold the school authorities free from any blame. In our view they must share the blame with the appellants. But the question is in what proportion? In view of the fact that their fault only consists of allowing the bus to come in, which is a privilege which the bus need not have to make use of, or a risk which it need not have to take, the blame on the school authorities should be of a lesser degree than that of the appellants, the bus owners and the driver.

We think it is fair and reasonable that the total liability be apportioned at 30% against the respondents (the school authorities) and 70% against the appellants (the bus owners and the driver).

We would, therefore, accordingly allow the appeal with costs both here and the court below and order that the appeal deposit should be refunded.

Appeal allowed.

Solicitors: *Ng Chee Kong & Co.*